

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOFANIS IONIDES, AS ADMINISTRATOR OF THE
ESTATE OF THE LATE DEMETRIOS DEMETRIOU,
Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF ESTATE DUTY,
Respondents.

(Case No. 205/76).

Estate duty—Gift inter vivos—Gift of immovable property in consideration of marriage—Made by the deceased donor within three years before his death—It forms part of his estate for estate duty purposes—It can be excluded therefrom only when there is a valid and enforceable contract of marriage under section 77(2) of the Contract Law, Cap. 149—Proviso (v) to section 7(d) of the Estate Duty Laws, 1962 to 1976.

Constitutional Law—Constitutionality of legislation—Taxation laws attacked as infringing principle of equality—Principles applicable—

Proviso (v) to section 7(d) of the Estate Duty Laws, 1962 to 1976 not unconstitutional as being contrary to Article 28 of the Constitution—A fiscal policy measure bearing a reasonable relationship to the object of estate duty legislation and making a reasonable classification in furtherance of such objects. 5

Estate Duty Laws, 1962 to 1976—Proviso (v) to section 7(d) not unconstitutional as being contrary to Article 28 of the Constitution.

In determining the estate duty value of the estate of the deceased Demetrios Demetriou, who died on the 13th December, 1973, the respondent Commissioner decided* that the gift of the one half share of a house in Nicosia, made by the deceased to his son on the 7th December, 1973, could not be considered as property given to others upon death by virtue of section 7(d)** of the Estate Duty Laws, 1962 to 1976, and that the allegation of the applicant that the gift was given in consideration of marriage could not be accepted as the provisions of proviso (v)*** to the above section 7(d), to the effect that such gifts have to be made in pursuance and in execution of a valid and enforceable contract, have not been fulfilled; and hence this recourse. 10 15

Counsel for the applicant contended: 20

(a) That once there was ample evidence that the above property had been given by the deceased to his son as dowry such property should have been excluded by the Commissioner, even in the absence of a written contract, once he was satisfied by evidence that the property has been given as dowry. 25

(b) That proviso (v) to section 7(d) of the Estate Duty Laws, 1962 to 1976 is unconstitutional as being contrary to Article 28 of the Constitution because there is an unreasonable discrimination between persons who have given dowry pursuant to a written contract and others who have actually given dowry without executing such a contract. 30

Held, (1) that the object of proviso (v) is to frustrate evasion of estate duty by requiring nothing less than the production of 35

* The relevant decision is quoted in full at p. 6 *post*.
 ** Quoted at p. 5 *post*.
 *** Quoted at pp. 5-6 *post*.

a valid and enforceable contract made in consideration of marriage; that, consequently, the execution of such contract should be made in compliance with the provisions of section 77(2)* of the Contract Law, Cap. 149 which are to the effect

5 that contracts relating to obligations in consideration of marriage shall not be valid and enforceable unless expressed in writing; that the wording of proviso (v) is clear and unambiguous; that

10 the Commissioner of Estate Duty in examining the case of the applicant was bound to apply the law strictly and require, as he did, a valid and enforceable contract of marriage; that since such a contract did not exist he was not entitled to go beyond that and examine the case of the applicant in the light of any other evidence; and that, accordingly, contention (a) must fail.

(2) That in every case in which the Court is dealing with the

15 issue of alleged unconstitutionality it has to be borne in mind that there is a presumption of constitutionality in favour of the provision concerned; that such provision can only be unconstitutional if the Court is persuaded in this respect beyond reasonable doubt; that, moreover, when taxation laws are attacked on the

20 ground that they infringe the doctrine of equality, the legislative discretion is permitted by the judiciary great latitude, in view especially of the inherent complexity of fiscal adjustments on diverse elements and because the power of the legislature to classify is of wide range and flexibility so that it can adjust its

25 system of taxation in all proper and reasonable ways; that absolute equality is neither required by the principle of equality nor is it feasible; that this Court has not been satisfied beyond reasonable doubt, that the provisions of proviso (v) to section 7(d) of the Estate Duty Law are unconstitutional as being

30 contrary to Article 28 of the Constitution; that, on the contrary, this proviso is a fiscal policy measure bearing a reasonable relationship to the object of estate duty legislation and makes a reasonable classification in furtherance of such objects; and that, accordingly, contention (b) must, also, fail.

35 *Application dismissed.*

Cases referred to:

Matsis v. The Republic (1969) 3 C.L.R. 245 at pp. 265 to 266, 267;

Board for Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640.

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* Quoted in full at p. 8 *post*.

Recourse.

Recourse against the decision of the respondent to include in the estate duty value of the estate of the deceased Demetrios Demetriou, late of Nicosia, the one half share of a house situated at Trypiotis Quarter, Nicosia, which was given by the deceased to his son as a gift. 5

A. Triantafyllides, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

MALACHTOS J. read the following judgment. 10
 in this recourse is the administrator of the estate of the deceased Demetrios Demetriou of Nicosia, a medical practitioner, who died on the 13th December, 1973. For the purposes of the Estate Duty Laws the applicant on the 14th and 16th January, 1975 submitted a declaration of property to the Commissioner of Estate Duty as required by section 32 of the said Laws. 15
 Regarding the determination of the value of the estate and property deemed to pass on the death of the deceased, several meetings took place and correspondence exchanged between the applicant and the respondent Commissioner. As no agreement was reached on all items included in the declaration of property on the 27th March, 1976, the respondent Commissioner raised an assessment under section 35 of the Law of £77,582.—The net estate duty on the above sum payable is £16,516.175 mils and for this amount the relevant notice of assessment in writing was given to the applicant. Against the above assessment the applicant objected and produced further evidence regarding disputed items of the estate declared. An agreement was reached on all disputed items, except on the one half share of a house under Registration No. 2367 situated at Trypiotis Quarter, Nicosia, transferred by the deceased as a gift to his son Constantinos D. Demetriou on the 7th December, 1973, who got married on the 19th August, 1972. The transfer of the above mentioned property was made within a period of three years before the date of the deceased's death, on the 13th December, 1973. The applicant, as provided under section 7(d)(v) of the Estate Duty Laws, did not produce to the satisfaction of the respondent Commissioner a valid and enforceable contract in respect of the said property proving that it was a gift made in consideration of marriage of the son of the deceased Constantinos D. Demetriou. The respondent Commissioner, 40

therefore, did not accept applicant's contention that the said property was a gift made in consideration of marriage but decided that the said property was a gift passing on death as provided under section 7(d)(v) of the Estate Duty Laws and, therefore, estate duty was payable. This section reads as follows:

"7. Property passing on the death of the deceased shall be deemed to include the property following, that is to say—

.....

(d) property taken as a donatio mortis causa made by the deceased or taken under a disposition made by him purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made three years before his death, or taken under any gift, whenever made, of which bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

Provided that—

.....

(v) nothing herein contained shall apply to gifts made in consideration of marriage if such gifts have been made in pursuance and in execution of a valid and enforceable contract. The date of execution of any contract shall, for the purposes of this sub-paragraph, be deemed to be the true date of execution thereof without further proof if the original of the contract or a copy thereof certified to be a true copy by a Registrar of a District Court shall have been presented to a Registrar of a District Court within thirty days of the date of execution of the contract or, in the case of a contract executed outside the Republic, within thirty days of the date of receipt of the contract in the Republic, and the date of execution shall have been certified by the Registrar; and the production of the original of such contract or of any certified copy thereof bearing the certification of the Registrar as to the date of execution as aforesaid shall, for the purposes of this sub-paragraph, be conclusive evidence of the true date of execution of such contract.

Provided that nothing in this sub-paragraph shall apply to gifts in consideration of marriage made before the date of the coming into operation of this Law, which gifts shall continue to be governed by the relative provisions of the Estate Duty Law, Cap. 319.”

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This decision of the respondent was communicated to the applicant by letter dated 15th July, 1976, *exhibit* 1, and its relevant part reads as follows:

“ The gift made by the deceased of the one half of the property under Registration No. 2367, Trypiotis Quarter, to his son Constantinos D. Demetriou, is not exempted from estate duty. The gift made is considered as property given to others upon death by virtue of section 7(d) of the Estate Duty Laws, 1962 to 1976. Your allegation that the gift was given in consideration of marriage by the deceased to his son Constantinos, cannot be accepted as the provisions of section 7(d)(v) of the Estate Duty Laws, 1962 to 1976 are not fulfilled”.

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As against this decision the applicant filed the present recourse claiming a declaration of the Court that the decision of the respondent to include in the estate duty value of the estate of the deceased the one half share of a house under Registration No. 2367 situated at Trypiotis Quarter, Nicosia, is null and void and of no legal effect whatsoever.

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Counsel for applicant argued that in the present case there is ample evidence that such dowry has been given by the deceased to his son and, consequently, the decision of the respondent not to exclude the said property from estate duty is contrary to law. He also submitted that once the Commissioner is satisfied or should have been satisfied by evidence that the property has so been given as dowry, it is no longer material whether there is a written contract to that effect. Even in the absence of a written contract the Commissioner must exclude such property once he is satisfied by evidence that the property has actually been given as dowry. In the case in hand the Commissioner took the view that he was not entitled to decide the issue in the absence of a written contract and this amounts to a misdirection. It is for the Commissioner to investigate into all the circumstances of the gift. Counsel for applicant also referred to the case of

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Matsis v. The Republic (1969) 3 C.L.R. page 245 on the question of constitutionality of section 7(d) of the Law and to the old Law Cap. 319, section 7(d)(iii) and quoted a passage from page 267 of the above judgment which is as follows:

5 “ It is, we think, proper, in view of the similarity of the
respective legislative systems, for our Estate Duty author-
ities to derive guidance from English Estate Duty practice.
But in a case such as this, in which proviso (iv) to section
7(d) is an integral part of the taxation provision under
10 consideration, and its existence is directly relevant to the
issue of whether or not the right to equality is being violated,
we must bear in mind the principle that in construing and
applying a statutory provision the Court must give to it,
if possible, a meaning consistent with constitutionality”.

15 Alternatively, counsel for applicant submitted that if the view
of the Commissioner as to the interpretation of proviso (v) to
section 7(d) is correct i.e. if only property given pursuant to a
written dowry contract can be exempted, then this proviso is
20 unconstitutional as being contrary to Article 28 of the Constitu-
tion because there is an unreasonable discrimination between
persons who have given dowry pursuant to a written contract
and others who have actually given dowry without executing
such a contract.

25 Now, the first question that falls for consideration in the
present case is whether the respondent Commissioner of Estate
Duty in examining the case of the applicant could go beyond the
provisions of proviso (v) and in the absence of any valid and
enforceable contract accept any other evidence tending to prove
that the said gift was made in consideration of marriage. This
30 certainly could be done under proviso (iii) to section 7(d) of the
old Law, Cap. 319, which only provided that “nothing herein
contained shall apply to gifts made in consideration of marriage”,
without the requirement of a valid and enforceable contract of
marriage contained in proviso (v) of section 7(d) of the new Law,
35 which is applicable in the case in hand.

In my view the object of proviso (v) is to frustrate evasion of
estate duty by requiring nothing less than the production of a
valid and enforceable contract made in consideration of
marriage. Consequently, the execution of such a contract

should be made in compliance with the provisions of section 77(2) of the Contract Law, Cap. 149, which is as follows:

“77(1)

(2) Contracts relating to obligations in consideration of marriage shall not be valid and enforceable unless— 5

(a) expressed in writing; and

(b) signed at the end thereof, in the presence of at least two witnesses themselves competent to contract who have subscribed their names as witnesses, by each party to be charged therewith or by a person who is himself competent to contract and who has been duly authorised to sign on behalf of such party.” 10

The short answer to this question is that the wording of proviso (v) is clear and unambiguous. The Commissioner of Estate Duty in examining the case of the applicant was bound to apply the law strictly and require, as he did, a valid and enforceable contract of marriage. Since such a contract did not exist he was not entitled to go beyond that and examine the case of the applicant in the light of any other evidence. 15

The second and last question for consideration is the constitutionality of proviso (v) to section 7(d) of the Law. 20

In every case in which the Court is dealing with the issue of alleged unconstitutionality, it has to be borne in mind that there is a presumption of constitutionality in favour of the provision concerned, and that such provision can only be unconstitutional if the Court is persuaded in this respect beyond reasonable doubt. (*Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640). 25

Furthermore, when taxation laws are attacked on the ground that they infringe the doctrine of equality, the legislative discretion is permitted by the judiciary great latitude, in view especially of the inherent complexity of fiscal adjustments on diverse elements and because the power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. These principles have been adopted in the case of *Matsis, supra*. At pages 265 to 266 of this report we read: 30 35

“ Our task in this case is to decide whether or not the said

‘three years’ provision’, in section 7(d), which results in treating, for estate duty purposes, as part of the property of a deceased donor passing on his death gifts made within three years before such death—even if some of such gifts cannot be shown to have been made with the intention of evading estate duty—entails such an arbitrary and unreasonable classification for taxation purposes as to contravene the principle of equality safeguarded by Article 28.

In this respect it is most material to bear in mind proviso (iv) to section 7(d) which excludes from the operation of the ‘three years’ provision’ gifts which are shown to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances under which they were made, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount; as well as proviso (v) to the same section which excludes from taxation gifts made in consideration of marriage.

Thus, to a considerable extent, gifts which were clearly not motivated by an intention to defeat the object of the estate duty legislation are excluded from the notion of the taxable estate of the deceased. It is correct that not all such gifts can be excluded by virtue of the aforementioned provisos; and, thus, there can, indeed, be instances of individual hardship resulting because of the effect of the ‘three years’ provision’; but in considering whether or not a classification for taxation purposes contravenes the principles of equality due allowance has to be made for the fact that it is impossible to expect any such classification to guard against all possible individual cases of hardship; absolute equality is neither required by the said principle nor is it feasible”.

Having considered the arguments of counsel in the light of the above principles, I must say that I have not been satisfied, beyond reasonable doubt, that the provisions of proviso (v) to section 7(d) of the Law are unconstitutional as being contrary to Article 28 of the Constitution. On the contrary, this proviso is a fiscal policy measure bearing a reasonable relationship to

the object of estate duty legislation and makes a reasonable classification in furtherance of such objects.

For the reasons stated above, this recourse fails and is dismissed.

· On the question of costs I make no order.

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Application dismissed. No order as to costs.